

with the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (Feb. 8, 1996). The Act provides the backdrop for the Commission's arbitration and approval of the final Agreement which is the subject of this petition. Nothing in this section of the Act for that matter, limits the Commission's authority to enforce its orders of agreements approved pursuant to this section.

III.

Virginia Rules of Contract Construction

16. Under § 29.5 of the Agreement, the parties agreed that the construction, interpretation and performance of the Agreement were to be governed and construed under Virginia law, except for its conflict of laws provisions. The only exception was that if federal law applies, that law would control. Application of Virginia rules of contract construction all point to one conclusion in this case -- the completion of local calls to Internet service providers is included in the reciprocal compensation regime.

17. In Virginia, "[a] well-settled principle of contract law dictates that where an agreement is complete on its face, and is plain and unambiguous in its terms, the court is not at liberty to search for its meaning beyond the instrument itself."²³ Moreover, "[a] contract is not deemed ambiguous merely because the parties disagree as to the meaning of the language they used to express their agreement."²⁴ Rather, the Supreme Court of Virginia has "defined 'ambiguity' as 'the condition of admitting of two or more meanings, of being understood in more than one way, or of referring to two or more things at the same time.'"²⁵

²² Pub.L. 104-104, 110 Stat. 56 *et seq.* (Feb. 8, 1996)

²³ *Ross v. Craw*, 231 Va. 206, 212, 343 S.E.2d 312, 316 (1986) (citing *Globe Company v. Bank of Boston*, 205 Va. 841, 848, 140 S.E.2d 629, 633 (1965))

²⁴ *Ross*, 231 Va. at 212-13.

²⁵ *Management Enterprises, Inc. v. The Thorncroft Co.*, 243 Va. 469, 472, 416 S.E. 2d 229, 231 (1992) (citing *Berry v. Klinger*, 225 Va. 201, 208, 300 S.E.2d 792, 796 (1983)).

18 Applying this law to the present situation, the fact that Bell Atlantic may disagree with the provisions of the Agreement does not make it an illegal contract. As explained in detail below, the Agreement is plain in its terms that the compensation for local calls to Internet service providers is included in the reciprocal compensation regime.

19 Even if Bell Atlantic were to persuade this Commission that the Agreement is susceptible to two interpretations relating to the treatment of local calls to Internet service providers, application of Virginia's rules regarding contract interpretation would yield the same result that Cox advocates. **First**, although negotiations between the parties prior to entering into a contract cannot be used to vary the terms, they can be used to determine the meaning and the intention of the parties. In *Bolling v. Hawthorne Coal and Coke Co.*, 197 Va. 554, 570, 90 S.E.2d 159, 170 (1955), the Court stated:

The preliminary negotiations between the parties and the meaning of the language used in connection with the surrounding facts and circumstances are to be considered not for varying or contradicting the plain terms of the instruments; but in order to determine the real meaning and intention of the makers of the instruments. In this consideration, the court, as nearly as possible, must place itself in the position of the parties in order to arrive at a proper construction of their contract.

20 Here, it was always the parties' understanding during the negotiations that local calls to Internet service providers constituted local traffic.²⁶ In this case, evidence of the parties' understanding during negotiations is provided by the record of the arbitration proceeding between Cox and Bell Atlantic. As will be explained below, in that proceeding, Bell Atlantic argued for a reciprocal compensation regime by pointing to imbalances in local traffic that would be caused by local calls to Internet service providers. At that time, Cox supported the use of bill-and-keep, rather than the payment of reciprocal compensation, as a way to minimize administrative costs and risks. However, both Cox and Bell Atlantic accepted the premise that local calls to Internet

²⁶ *Affidavit of Wes Neal, Cox Virginia Telcom, Inc.*, ¶¶ 4-13.

service providers were local traffic.

21 Bell Atlantic now takes a diametrically opposite position as to local calls to Internet service providers than it presented on the record in the arbitration proceeding. This, of course, is contrary to Virginia law, which does not allow parties to take inconsistent positions. See *Winston v. Neufke*, 224 Va. 647, 653, 299 S.E.2d 354, 358 (1983) (in which the Court held, "We are committed to the principle that we do not permit a litigant to assume inconsistent and mutually contradictory positions." (citations omitted)); see also *Berry v. Klinger*, 225 Va. 201, 207, 300 S.E.2d 792, 795 (1983) ([A] litigant will not be permitted to assume, successively inconsistent and mutually contradictory positions").

22 *Second*, another interpretive tool available to the Commission relates to the use of technical words or terms of art in certain businesses. In *Eppes v. Eppes*, 169 Va. 778, 805, 195 S.E. 694, 702 (1938), the Supreme Court of Virginia held that, "Technical words, ordinarily, are to be taken in a technical sense. The language of the parties is to be construed in accordance with the ordinary acceptance of the terms used." It is accepted in the industry that the term "Local Traffic" includes local calls to Internet service providers. Indeed, when residential or business customers with local measured service place local calls to Internet service providers, Bell Atlantic bills these customers for those calls as local calls.²⁷ Bell Atlantic should not be permitted to classify local calls to Internet service providers as Local Traffic for purposes of extracting revenues from its residential and business customers, and then use another classification to avoid paying for the termination of these calls.

IV.

Local Calls to Internet Service Providers are Local Traffic Under the Agreement

23. Local calls to Internet service providers satisfy the Agreement's definition of Local

²⁷ *Affidavit of Tom Manos, InfiNet Co.*, ¶ 5.

Traffic: A local call to an Internet service provider originates from a customer on that Party's network and terminates to a customer on the other Party's network, within a given local calling area. If the call is such a call is the customer of one telephone company making a local call to a customer of another telephone company.

24 Two related concepts incorporated into the Agreement's definition of Local Traffic help to explain why local calls to Internet service providers are included within this definition

(i) differentiating between a "Customer" and a "Telecommunications Carrier," and

(ii) understanding that a call is terminated or completed to a customer, irrespective of what that customer does with the call on its own network

25 The Agreement defines "Customer" to mean "a third-party residence or business *end-user subscriber* to Telecommunications Services provided by either of the Parties."²⁹ Customers purchase retail services as provided by the tariffs of the parties. Similar to any other business customer, Internet service providers purchase telephone service from Bell Atlantic or Cox pursuant to the local business tariffs of these carriers.³⁰ Thus, as customers, Internet service providers are provided "with a telephonic connection to, and a unique telephone number address on, the public switched telecommunications network, and enables such Customer to place or receive calls to all other stations served by the public switched telecommunications network."³¹

26 A "Telecommunications Carrier," on the other hand, is defined in § 1.77 of the Agreement, consistent with the Act,³² to be "any provider of Telecommunications Services, except that such term does not include aggregators of Telecommunications Services (as defined in

²⁸ Agreement at § 1.45.

²⁹ *Id.* at § 1.16 (emphasis added)

³⁰ *Affidavit of Tom Manos, InfiNet Co.*, ¶ 3.

³¹ Agreement § 1.79, definition of "Telephone Exchange Service."

³² Act at § 3(44).

Section 226 of the Act defines Telecommunications Service as defined in the Act and § 1.75 of the Agreement, means "the offering of Telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." As explained in more detail below, *Internet service providers are not Telecommunications Carriers.*

27 The distinction between a Customer and a Telecommunications Carrier is important because as a Customer, Internet service providers may employ Customer Premises Equipment³³ "to originate, route, or terminate telecommunications." In other words, a Customer may own and operate its own private telecommunications network that is separate and apart from the public switched telecommunications network. By contrast, a Telecommunications Carrier's network serves as part of the public switched telecommunications network.

28 Consequently, the mere fact that an Internet service provider may function as "a gateway to another telecommunications network," as alleged in Bell Atlantic's letter of May 29, 1997, is irrelevant to whether a telephone call to the Internet service provider on the public switched telecommunications network is classified as local or toll. What matters is the physical location of the customer originating the call on the public switched telecommunications network, and the physical location of the customer (Internet service provider) where the call is terminated on the public switched telecommunications network.

³³ Section 226(a)(2) of the Act defines "aggregator" to mean "any person that, in the ordinary course of its operations, makes telephones available to the public or to transient users at its premises, for interstate telephone calls using a provider of operator services."

³⁴ Act at § 3(46).

³⁵ "Telecommunications" is defined by § 3(43) of the Act and § 1.75 of the Agreement to mean "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received."

³⁶ *Id.* at § 3(14).

29 Furthermore, the fact that a call may be terminated to leave the public switched telecommunications network at a customer's premises, or be routed to and then be transmitted interstate to a third or fourth location is not dispositive as to Internet service providers. Many businesses and governments operate their own private networks. Under the Agreement, a local call terminated to such a business or government is Local Traffic, irrespective of where the business or government's system eventually routes the call.

30 Conversely, toll calls delivered to an interexchange carrier are not terminated to the interexchange carrier's own network, but remain on the public switched telecommunications network. Accordingly, interexchange carriers pay interstate access charges regulated by the FCC Rates set for the services purchased by Internet service providers are set separately in each state.

V.

In the Arbitration Proceeding, Bell Atlantic Treated Local Calls to Internet Service Providers as Local Traffic

31 Bell Atlantic now appears to claim that local calls to Internet service providers are, by nature, interstate calls. Therefore, in its view, these calls should not be subject to reciprocal termination compensation which is available only for "Local Traffic." However, Bell Atlantic's current position is directly contrary to its characterization of this traffic to the Commission during the arbitration proceeding. That is, Bell Atlantic specifically testified, and even argued in arbitration proceedings before the Commission debating the merits of bill and keep arrangements, that calls to Internet service providers were traffic subject to reciprocal termination compensation.

32 In the arbitration proceedings before the Commission, one of the issues the Commission was asked to decide concerned the compensation to be paid for the completion of local traffic that originates on either Cox or Bell Atlantic's network but is completed or terminated by the other party to customers on that party's network. Cox proposed and supported the adoption of bill and keep, at least on an interim basis, as a means of avoiding administrative costs and risks associated

with tracking and billing for the termination of local calls. Under bill and keep arrangements, Bell Atlantic and Cox each would receive calls terminating on its own network to the other's network without any direct payment for providing this service. The theory that over time, the traffic between Bell Atlantic and Cox would be in balance and each company would terminate approximately the same level of local traffic as the other.³⁷

33 Throughout the arbitration proceedings, Bell Atlantic was openly hostile to the notion of bill and keep. Particularly, Bell Atlantic faulted the underlying concept that traffic between local exchange carriers would be in balance over time and that each company would terminate an equal number of local calls to the other's network. Bell Atlantic witnesses consistently maintained that local terminating traffic "will absolutely not be in balance."³⁸ To illustrate this concept, Bell Atlantic witness Eichenlaub specifically pointed to local calls terminated to Internet service providers

For example, if they [customers served by CLECs] provide Internet provider services, that's all incoming. None of it will ever be outgoing as long as they're providing Internet service. . . .⁴⁰

34 Ms. Eichenlaub continued to drive home this point by testifying:

What I was saying was, that some of the competitive carriers in the State – in the region, are building business plans around Internet service providers. *When you provide Internet service that way, all of the calls to the Internet provider are incoming calls, so they're all terminating on your, if you will, switch. And for that Internet customer, there are no outgoing calls at all. . . . Clearly an imbalance.*⁴¹

³⁷ Testimony of Cox witness Collins, Case Nos. PUC960100, PUC960103, PUC960104, PUC960105, and PUC960113, Collins, Tr. at 920-21; Exh. FRC-42 at 11-12.

³⁸ Case Nos. PUC960100, PUC960103, PUC960104, PUC960105, and PUC960113, Collins, Tr. at 896, 897; Exh. FRC-42 at 12, 13.

³⁹ See, e.g., testimony of Bell Atlantic witness Eichenlaub, Case Nos. PUC960100, PUC960103, PUC960104, PUC960105, and PUC960113, Eichenlaub, Tr. at 553.

⁴⁰ Case Nos. PUC960100, PUC960103, PUC960104, PUC960105, and PUC960113, Eichenlaub, Tr. at 630.

⁴¹ *Id.* at 632 (emphasis added)

35. Again in her testimony, Eichenlaub testified that the "most telling difference in balance" was caused by "the imbalance in local traffic due to traffic to Internet service providers," stating that

every single person who calls that Internet service provider will be making a termination on the CLEC's switch, and there will be no return calls from that CLEC switch Internet provider back to that end user customer. So the differentiation is not the end user, but the services provided out of the business plan of the CLEC, and they will vary from carrier to carrier.⁴²

36. Ms Eichenlaub concluded her comments concerning the imbalance in the termination of local traffic caused by local calls to Internet services providers by characterizing such traffic as "the most telling difference in balance for the CLECs whose data I've looked at."⁴³

37. Moreover, Bell Atlantic did not rely solely on its own witnesses to make the point that service to Internet service providers would cause local terminating traffic to be out of balance. Bell Atlantic also cross-examined witnesses for Cox and other parties regarding bill and keep arrangements and traffic imbalances. Specifically, Bell Atlantic questioned Dr. Collins regarding the impact that Internet service providers would have on the exchange of traffic:

Q. I believe you would agree that other businesses, such as Internet access providers, or other customer-service related businesses, will receive many more calls than they originate

A. Yes.

Q. And a CLEC whose only customers were such businesses would also not have traffic that is in balance

A. That is true, but the CLEC wouldn't have a business.

Q. And that that CLEC would, in fact, receive more traffic than it would send

A. If the case is as sterile as you have presented it, that is

⁴² *Id.* at 633 (emphasis added)

⁴³ *Id.*

true.”

38 Clearly, throughout the arbitration proceedings, Bell Atlantic characterized calls to Internet service providers as a major form of traffic, and hence precluding the use of bill-and-keep arrangements for termination of local traffic. Bell Atlantic cannot now come before the Commission to argue, with a straight face, that these same local calls to Internet service providers are interstate communications and therefore not subject to local termination charges. Local calls to Internet service providers do not change their nature at the wish or caprice of Bell Atlantic. They are *local by nature*. Bell Atlantic has admitted and argued this point before the Commission. The Commission has demonstrated its agreement with this characterization by accepting Bell Atlantic's arguments and rejecting the bill-and-keep regime.⁴⁵ Bell Atlantic should not now be permitted, in the words of Justice Jackson, to “change[] positions as nimbly as if dancing a quadrille.”⁴⁶

39 Furthermore, the Arbitration Decisions of the Commission are binding upon the parties. Cox and Bell Atlantic explicitly were ordered to “submit an interconnection agreement in this docket incorporating the applicable findings of the Commission in this case, along with issues resolved by the parties through negotiations, within sixty (60) days of entry of this order.”⁴⁷ Accordingly, for the Agreement to reflect the Commission's Arbitration Decisions, traffic

⁴⁴ Case Nos. PUC960100, PUC960103, PUC960104, PUC960105, and PUC960113, Zacharia, Tr. at 914.

⁴⁵ *Petition of Cox Fibernet Commercial Services, Inc. For arbitration of unresolved issues from interconnection negotiations with Bell Atlantic-Virginia, Inc. pursuant to § 252 of the Telecommunications Act of 1996*, Order Setting Proxy Prices and Resolving Interim Number Portability, Case No. PUC960104, 4-5 (November 8, 1996).

⁴⁶ *Orloff v. Willoughby*, 345 U.S. 83, 87 (1953).

⁴⁷ *Petition of Cox Fibernet Commercial Services, Inc. For arbitration of unresolved issues from interconnection negotiations with Bell Atlantic-Virginia, Inc. pursuant to § 252 of the Telecommunications Act of 1996*, Order Resolving Remaining Arbitration Issues and Requiring Filing of Interconnection Agreement, Case No. PUC960104, 3 (November 8, 1996).

included in the reciprocal compensation that must be paid to the local exchange for terminating local calls to Internet service providers.

VI.

Parties' Understanding During Negotiations

40 One apparent factual difference between the parties concerns information exchanged during negotiations. In its May 22, 1997, letter to Bell Atlantic, Cox states "At no time during the protracted and comprehensive interconnection negotiations between Bell Atlantic and Cox did Bell Atlantic ever assert, imply or even remotely suggest that it considered local calls to internet access providers to be anything other than local traffic." In its response dated May 29, 1997, Bell Atlantic stated that it "specifically advised Cox during the negotiation of the negotiation of the [sic] agreement that Internet traffic does not qualify as "Local Traffic". It is my understanding that this topic was specifically addressed during a January 30 conference call."

41 As explained in the attached Affidavit of Wes Neal, Bell Atlantic's contentions in this regard are simply incorrect. By January 30, 1997, Cox had developed its business plans and marketing strategy, and had begun to invest in facilities to implement its business and marketing plans. Cox had developed projections of revenues and had projections of trunking and traffic demands. The primary purpose of the January 30th conference call was for Cox to share these plans with Bell Atlantic.

42 As described in the Neal Affidavit, Bell Atlantic did not question or contradict Cox's revenue forecasts or question whether or not Cox was entitled to compensation for terminating local calls to Internet service providers.⁴⁸ Mr. Neal further explains: "Because of the importance of these revenues to Cox, especially given the fact that Cox has undertaken the investment and will incur additional costs associated with terminating local calls to Internet service providers, we

⁴⁸ Attached Affidavit of Wes Neal, Cox Virginia Telcom, Inc., ¶ 12.

would have been very sensitive to any development that would have caused these revenues into question.

43 In summary, Cox's understanding throughout the negotiations and arbitration was that local calls to Internet service providers were Local Traffic and eligible for compensation for transport and termination. Nothing during the negotiations that occurred subsequent to the arbitration proceeding caused Cox to change or even question this understanding.

VII.

FCC Treatment of Internet Service Providers

44 FCC regulation of the Internet does not alter any of the analysis presented above. Local calls to Internet service providers are Local Traffic. Indeed, FCC regulation regarding the Internet reinforces Cox's position (i) that Internet service providers are Customers, and not Telecommunications Carriers, and (ii) that local calls to Internet service providers are Local Traffic.

Internet Service Providers Are Customers

45 Bell Atlantic maintains that it does not have to pay COX charges to terminate calls to Internet service providers utilizing COX facilities because Internet calls are interstate in nature and therefore not local calls. Thus, Bell Atlantic would have this Commission believe that Internet service providers transmit calls and should be treated like an *interexchange carrier*. This position, of course, promotes Bell Atlantic's economic self-interest: Bell Atlantic would be relieved of the burden of terminating calls to Internet service providers that migrate to Cox's network, as well as freed of any obligation to pay local call termination charges.

46 However, the reality of the provision of telephone service to Internet service providers differs dramatically from Bell Atlantic's erroneous (and now financially expedient) premise. The FCC has consistently recognized the distinctive differences between Internet service providers and interexchange carriers, and, to date, has insisted that Internet service providers not be subjected to

the same regulatory regime as IXCs. Similar regulatory announcements concerning the regulation of Internet service providers confirm that they are properly classified as customers of Bell Atlantic that share the same characteristics as other business end users.

Local Calls to Internet Service Providers Are Local Traffic.

47 FCC determinations support Cox's understanding that local calls to Internet service providers are Local Traffic. *First*, by nature, Internet signals do not travel via dedicated end-to-end transmission paths. This distinguishes the Internet from traditional interexchange phone calls. Interexchange service is based on a circuit-switched network, e.g., the public switched network, and interexchange calls follow a dedicated path from one end user to the other.⁴⁹ Every time one person makes a long distance phone call to another person, the call travels over a dedicated transmission path to reach that other person.⁵⁰ Conversely, Internet signals utilize a packet switched network in which packets of information are sent from router to router based on traffic levels.⁵¹ Thus, two packets of information sent from the same person at the same time may take two different paths to reach a common destination.⁵² Furthermore, Internet signals do not utilize dedicated facilities. At any given time, a number of callers can share physical facilities.⁵³ The Internet does not control a transmission path for any real length of time.⁵⁴ The only circuit that must be held open for the caller to access and retrieve data is the local connection from the Internet user terminated to the Internet service provider, who is itself a customer of the incumbent

⁴⁹ OFFICE OF PLANS AND POLICY, FEDERAL COMMUNICATIONS COMMISSION, DIGITAL TORNADO: THE INTERNET AND TELECOMMUNICATIONS POLICY at § II(C)(1) (March 1997).

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.* at Executive Summary § A.

⁵⁴ *Id.* at § IV(C)(3)(a)(2).

LEC.⁴⁷ Once this local call is terminated, the Internet service provider continues the call as a long distance message much like a business with a private line. In this situation, an incoming call, in short, the call is locally terminated to the business, which then routes the call through its own private network. Similarly, an Internet service provider receives local calls terminated to its point of presence and then routes the call through its own network. In both cases, the call is treated as a local call for incumbent LEC purposes.

48. *Second*, the FCC has recognized that important differences exist between Internet service providers and interexchange carriers for regulatory purposes. The FCC has consistently recognized that the use of the Internet and other information services is dissimilar from traditional long distance telephone calls. In its recent *Access Charge Reform Order*,⁴⁸ the FCC reaffirmed its long-standing refusal to subject Internet service providers to interstate access charges. The FCC noted that it had allowed Internet service providers, since their inception, to pay flat rate end user business charges. It explained:

ISPs may purchase services from incumbent LECs under the same intrastate tariffs available to end users. Internet service providers may pay business line rates and the appropriate subscriber line charge, rather than interstate access rates, even for calls that appear to traverse state boundaries. . . . Internet service providers typically pay incumbent LECs a flat monthly rate for their connections regardless of the amount of usage they generate, because business line rates typically include usage charges only for outgoing traffic. *Access Charge Reform Order* ¶ 342.

49. Further to support its conclusion "that the existing pricing structure for Internet service providers should remain in place, and incumbent LECs will not be permitted to assess interstate

⁴⁷ *Id.*

⁴⁸ First Report and Order In the Matter of: Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, and Usage of the Public Switched Network by Information Service and Internet Access Providers, FCC 97-158, rel. May 16, 1997 (hereafter *Access Charge Reform Order*)

per-minute access charges in Internet service providers. In the FCC noted that in its *Access Charge Reform Order*,⁵⁷ its *Notice of Proposed Rulemaking*⁵⁸ that Internet service providers "should not be subjected to an interstate regulatory system designed for circuit-switched interexchange voice telephony solely because Internet service providers use incumbent LEC networks to receive calls from their customers."⁵⁹ In this regard, the FCC observed that

given the evolution in [information service provider] technologies and markets since we first established access charges in the early 1980s, it is not clear that [information service providers] use the public switched network in a manner analogous to IXC's. . . . As commenters point out, many of the characteristics of ISP traffic (such as large numbers of incoming calls to Internet service providers) may be shared by other classes of business customers.⁶⁰

The FCC similarly reasoned that "[t]he access charge system was designed for basic voice telephony provided over a circuit-switched network, and . . . it may not be the most appropriate pricing structure for Internet access and other information services."⁶¹

50. Furthermore, and of critical importance, the FCC pointed out that the relationship between incumbent LECs and Internet service providers historically has been a matter of *local* concern, subject to regulation by *state* commissions. Specifically, the FCC emphasized:

⁵⁷ *Access Charge Reform Order* ¶ 344.

⁵⁸ *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing; Usage of the Public Switched Network by Information Service and Internet Access Providers, Notice of Proposed Rulemaking*, 62 Fed.Reg. 4670, 4711 (Jan. 31, 1997) (*NPRM*). In the *NPRM*, the FCC observed that "[t]he mere fact that providers of information services use incumbent LEC networks to receive calls from their customers does not mean that such providers should be subject to an interstate regulatory system designed for circuit-switched interexchange voice telephony." 62 Fed.Reg. at 4711.

⁵⁹ *Access Charge Reform Order* ¶ 343. Contemporaneously with the *NPRM*, the FCC also inaugurated a *Notice of Inquiry* to "address a range of fundamental issues about the Internet and other information services, including [information service provider] usage of the public switched network." *Id.* ¶ 348; 62 Fed.Reg. at 4712-13.

⁶⁰ *Id.* ¶ 345 (emphasis added).

⁶¹ *Id.* ¶ 347.

Internet service providers and other information service providers connect into the incumbent LEC networks by purchasing service from the incumbent LECs. Incumbent LECs also receive incremental revenue from Internet usage through higher demand for second lines by consumers, usage of dedicated data lines by Internet service providers, and subscriptions to incumbent LEC Internet access services. To the extent that some *intrastate* rate structures fail to compensate incumbent LECs adequately for providing service to customers with high volumes of incoming calls, incumbent LECs may address their concerns to state regulators.⁶²

In sum, these decisions demonstrate that the FCC has drawn a line of demarcation between the regulation of information service providers (including Internet service providers), on the one hand, and the regulatory regime applicable to interexchange carriers. Contrary to Bell Atlantic's critical (but incorrect) premise, Internet service is not an interstate service, either intrinsically or from a regulatory standpoint. On the contrary, it is a local service involving termination of a local call from the incumbent LEC to the Internet service provider.

⁶² *Id.* ¶ 346 (emphasis added).

WHEREFORE Cox respectfully requests that the Commission enter an order requiring that local calls to Internet service providers be treated as toll-free under the terms of the Agreement and that Cox and Bell Atlantic are entitled to receive compensation for the completion of these calls.

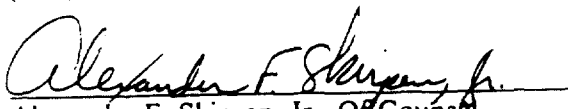
Respectfully submitted,

COX VIRGINIA TELCOM, INC.

By Counsel

Carrington Phillip
Cox Communications, Inc.
1400 Lake Hearn Drive, N.E.
Atlanta, GA 30319
(404) 843-5000

Louis R. Monacell
John D. Sharer
Alexander F. Skirpan, Jr.
CHRISTIAN & BARTON, L.L.P.
909 East Main Street, Suite 1200
Richmond, VA 23219-3095
(804) 697-4100


Alexander F. Skirpan, Jr., Of Counsel

June 13, 1997

-388594 J

ATTACHMENT 1

CHRISTIAN & BARTON

ATTORNEYS AT LAW
600 EAST MAIN STREET, SUITE 1500
NORFOLK, VIRGINIA 23510
TELEPHONE (804) 621-4111
FACSIMILE (804) 621-4112

NORFOLK OFFICE
600 EAST MAIN STREET, SUITE 1500
NORFOLK, VIRGINIA 23510

804 621-4111
804 621-4112

May 22, 1997

BY HAND

Warner F. Brundage, Jr., Esq.
Vice President, General Counsel & Secretary
Bell Atlantic - Virginia, Inc.
600 East Main Street - 24th Floor
P.O. Box 27241
Richmond, VA 23261

Re: **Implementation Of Interconnection Agreement
Between Bell Atlantic and Cox**

Dear Warner:

Cox has received a voice-mail message in which Bell Atlantic indicates that it will not treat the termination of local calls to internet access providers as the termination of local traffic. If, in fact, the voice-mail message accurately reflects Bell Atlantic's current position with respect to this issue, any attempt on the part of Bell Atlantic to implement this position would constitute a substantial and material breach of the Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 (dated as of February 12, 1997) between Bell Atlantic-Virginia, Inc. and Cox Fibernet Commercial Services, Inc. and Cox Fibernet Access Services, Inc. ("Bell Atlantic-Cox Interconnection Agreement").

At no time during the protracted and comprehensive interconnection negotiations between Bell Atlantic and Cox did Bell Atlantic ever assert, imply or even remotely suggest that it considered local calls to internet access providers to be anything other than local traffic. Similarly, nothing in the detailed Bell Atlantic-Cox Interconnection Agreement gives the slightest hint, or basis for Bell Atlantic to argue, that local calls to internet access providers are anything other than local traffic.

Accordingly, on behalf of Cox, we formally request that you promptly provide a written explanation of Bell Atlantic's current position as to the termination of local calls to internet access providers, including, without limitation, the compensation regime that, in Bell Atlantic's view, is contractually applicable to the termination of these calls. Furthermore, if Bell

CHRISTIAN & BARTON, L.L.P.

Warner F. Brundage, Jr. Esq.

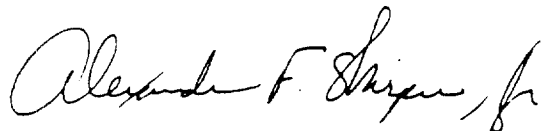
May 22, 1997

Page 2

Atlantic does not consider local calls to internet access providers to be local traffic, then, pursuant to Section 29.9, p. 66 ("Dispute Resolution") of the Bell Atlantic-Cox Interconnection Agreement, we request that you furnish us with the names, titles, and telephone numbers of the Bell Atlantic employees authorized to resolve this issue through good faith negotiations.

Thank you.

Sincerely,



Alexander F. Skirpan, Jr.

cc: Director - Interconnection Services
Bell Atlantic Network Services, Inc.
1320 North Courthouse Road, Ninth Floor
Arlington, VA 22201-2507

Mr. Franklin R. Bowers
Carrington F. Phillip, Esq.
Mr. Dana G. Coltrin
John D. Sharer, Esq.

#387357.2

ATTACHMENT 2

Warner E. Bourdage, Jr.
Vice President
1000 North 17th Street
Richmond, Virginia 23219
Tel: 804/772-2143

Warner E. Bourdage, Jr.

May 29, 1997

Sent via Facsimile

Mr. Alexander F. Skirpan, Jr., Esq.
Christian & Barton, L.L.P.
909 East Main Street, Suite 1200
Richmond, VA 23219-3095

Dear Alex:

This letter responds to your May 22, 1997 letter, regarding treatment of Internet calls delivered by Bell Atlantic-Virginia ("BA") to Cox.

It is inconsistent with the terms of the February 12, 1997 BA-Cox interconnection agreement ("agreement") to bill reciprocal compensation for calls handed off by Cox for completion by an Internet Service Provider ("ISP"). The great majority of calls handed off to an ISP do not terminate at the ISP's local office. Rather, most ISP calls use the ISP as a gateway to another telecommunications network, the Internet, which carries the call to locations outside the local calling area – often across the country or internationally. Accordingly, telephone calls made to complete a connection over the Internet are not "Local Traffic" within the meaning of the agreement. In particular, such traffic does not "terminate[] to a Customer of the other Party on that other Party's network, within a given local calling area, or expanded area service ("EAS") area..." as defined in agreement section 1.45.

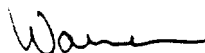
In fact, BA specifically advised Cox during the negotiation of the negotiation of the agreement that Internet traffic does not qualify as "Local Traffic". It is my understanding that this topic was specifically addressed during a January 30 conference call, to which yourself and other Cox representatives participated.

Since Internet traffic is not "Local Traffic" under the agreement, it is not subject to reciprocal compensation. Until the FCC modifies the Enhanced Service Provider exemption, however, it appears that the ISPs are exempt from access charges that Cox and BA would normally charge a third-party carrier that carries a call to a location beyond the local calling area. This means that this traffic is currently subject to no charge, at least between Cox and BA.

Alexander F. Skirpan, Jr., Esquire
May 29, 1997
Page Two

If you would like to discuss how we might estimate the volumes of Internet traffic passing between our companies that should be excluded from reciprocal local call termination compensation, please contact Jeff Masoner, Director-Interconnection Services. You may reach Mr. Masoner on (703)974-4610. If you have other questions about this matter, you should contact Mr. Masoner, myself at the number above, or Michael Lowe on (703)974-7344.

Very truly yours,



Warner F. Brundage, Jr.

Copy to:
Michael Lowe, Esq.
Jeffrey Masoner

ATTACHMENT 3

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

Petition of

COX VIRGINIA TELCOM, INC.,

v.

Case No. PUC97 _____

BELL ATLANTIC-VIRGINIA, INC.,

*For enforcement of interconnection agreement and
arbitration award for reciprocal compensation for
the termination of local calls to Internet service providers.*

AFFIDAVIT OF WES NEAL, VIRGINIA TELCOM, INC.

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

Petition of

COX VIRGINIA TELCOM, INC.,

v.

Case No. PUC97 ____

BELL ATLANTIC-VIRGINIA, INC.,

**For enforcement of interconnection agreement and
arbitration award for reciprocal compensation for
the termination of local calls to Internet service providers.**

AFFIDAVIT OF WES NEAL, COX VIRGINIA TELCOM, INC.

Wes Neal, being duly sworn, deposes and says

1. I am marketing director for Cox Virginia Telcom, Inc., formerly Cox Fibernet Commercial Services, Inc ("Cox"). I make this Affidavit in support of Cox's Petition for Enforcement of Interconnection Agreement and Arbitration Award for Reciprocal Compensation for the Termination of Local Calls to Internet Service Providers.

2. Cox is certificated to operate as a competitive local exchange company in Virginia.

3. I participated in interconnection negotiations with Bell Atlantic-Virginia, Inc. ("Bell Atlantic"), both before and after the arbitration proceeding before the Virginia State Corporation Commission ("Commission"), Case No PUC960104. Among these activities, I participated in a conference call that occurred on January 30, 1997

4. Cox's initial position in interconnection negotiations and in the arbitration before the Commission was that Cox wanted bill and keep to govern the exchange of local